

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kenneth Shelton	Team: Squad #4	CCRB Case #: 201805070	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 06/22/2018 7:00 PM	Location of Incident: Forest Hills Stadium Entrance - 1 Tennis Place	Precinct: 112	18 Mo. SOL 12/22/2019	EO SOL 12/22/2019	
Date/Time CV Reported Mon, 06/25/2018 2:48 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 06/25/2018 2:48 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			Unknown
2. SGT Francis Clough	02280	915065	PBQ/N
3. POM Jermaine Scott	02459	949647	109 PCT
4. POM Julio Vasquez	04303	918603	109 PCT
5. LT Joseph Mauceli	00000	945969	PBQ/N

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Matthew Magenheimer	17520	959775	109 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Julio Vasquez	Force: Police Officer Julio Vasquez used physical force against § 87(2)(b)	§ 87(2)(g)
B.POM Jermaine Scott	Force: Police Officer Jermaine Scott used physical force against § 87(2)(b)	§ 87(2)(g)
C.SGT Francis Clough	Force: Sergeant Francis Clough used physical force against § 87(2)(b)	§ 87(2)(g)
D.LT Joseph Mauceli	Force: Lieutenant Joseph Mauceli used physical force against § 87(2)(b)	§ 87(2)(g)
E. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(g)
F.POM Julio Vasquez	Force: Police Officer Julio Vasquez used a chokehold against § 87(2)(b)	§ 87(2)(b)

Case Summary

On June 25, 2018, § 87(2)(b) filed this complaint with the CCRB in-person.

On June 22, 2018, at approximately 6:52 p.m. and in the vicinity of Forest Hills Stadium Entrance - 1 Tennis Place in Queens, § 87(2)(b) attempted to enter the stadium with his brother, § 87(2)(b) and son, § 87(2)(b)'s brother, § 87(2)(b) was stopped by a security guard and informed that he could not enter with a metal pen. After a conversation with the security guard, and Sgt. Francis Clough of the Patrol Borough Queens North; PO Julio Vasquez and PO Jermaine Scott, both of the 109th precinct, and Sgt. Clough and Lt. Mauceli, of Patrol Borough Queens North, grabbed § 87(2)(b) brought him down to the ground, and placed him in handcuffs (**Allegation A, B, C, D, E: Force, § 87(2)(g)**). After making physical contact with § 87(2)(b) PO Vasquez allegedly placed § 87(2)(b) in a chokehold for approximately 10 seconds (**Allegation F: Force, § 87(2)(g)**). § 87(2)(b) was placed under arrest for resisting arrest, obstruction of a governmental administration in the second degree, menacing in the third degree, and disorderly conduct and then taken to the 112th stationhouse and later transported to § 87(2)(b) Hospital.

There was video from Forest Hills Stadium provided to the investigation by the NYPD which was obtained from the TRI prepared in regards to the incident.

Findings and Recommendations

Allegation (A) Force: Police Officer Julio Vasquez used physical force against § 87(2)(b)

Allegation (B) Force: Police Officer Jermaine Scott used physical force against § 87(2)(b)

Allegation (C) Force: Sergeant Frnaxis Clough used physical force against § 87(2)(b)

Allegation (D) Force: Lieutenant Joseph Mauceli used physical force against § 87(2)(b)

Allegation (E) Force: Officers used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) and § 87(2)(b) attempted to enter Forest Hills Stadium through the metal detectors, located at the main entrance to the stadium. It is undisputed that § 87(2)(b) a security guard, and Sgt. Clough engaged in conversation concerning § 87(2)(b) not being allowed to enter the stadium with a metal pen. During this conversation, § 87(2)(b) became aggravated, although he did not describe how he became aggravated aside from stating that he became loud, and called Sgt. Clough a “pussy.” Immediately thereafter, it is undisputed that officers used physical force against § 87(2)(b) causing an abrasion to his right knee, although the circumstances surrounding the use of force remain in dispute.

§ 87(2)(b) (BR 02) said that after joining § 87(2)(b) at the metal detectors, he heard a male voice state “jerk,” “idiot,” or some kind of name. § 87(2)(b) stated that he consumed marijuana approximately four hours prior to the incident and added that he may have assumed that one of the security guards called him a “jerk” due to its effects. In response, he asked everyone around him who called him a “jerk” since he did not speak to them. § 87(2)(b) acknowledged that since he took the marijuana he could have been aggravated, loud, and obnoxious towards the surrounding staff and added that he had a “long history of civil disobedience in this country.” Less than five seconds later, § 87(2)(b) felt two to three different individuals grab him from behind and tackle him to the floor. § 87(2)(b) locked his legs while standing up and the officers forced him onto the ground causing him to land on his right knee, which caused an abrasion to his right knee. § 87(2)(b) denied rushing towards Sgt. Clough. He also denied flailing his arms and did not remember being given any instructions by the officers.

§ 87(2)(b) was treated § 87(2)(b) on § 87(2)(b) (BR 14). He complained of an abrasion to his right knee and swelling and abrasion to his left forearm. § 87(2)(b) was treated for an abrasion to his right knee and for swelling and abrasion to his left forearm. The medical records note that § 87(2)(b) stated that he was pushed during his arrest. § 87(2)(b) (BR 03) said that after he called Sgt. Clough a “pussy”, he heard a commotion behind him and turned around to see officers rush at § 87(2)(b). § 87(2)(b) denied seeing § 87(2)(b) rush towards the officers prior to this. Officers attempt to grab § 87(2)(b)'s arms to place him in handcuffs. § 87(2)(b) did not witness § 87(2)(b) swing his arms and did not hear officers issue § 87(2)(b) any instructions.

Sgt. Clough (BR 06) said that after § 87(2)(b) called him a “pussy”, § 87(2)(b) immediately turned around, became irate, and engaged in a verbal dispute with Sgt. Clough by stating, “What, what, what did you say?” Sgt. Clough told § 87(2)(b) that he did not call him by the discourteous word and that it was his brother who stated it. § 87(2)(b) did not respond, refused to believe that Sgt. Clough did not call him the word, and became displeased. § 87(2)(b) charged at Sgt. Clough by clenching his fists, barking like a dog, and exaggeratingly running towards him. Sgt. Clough did not recall where § 87(2)(b) had his hands as he clenched them and added that he was in fear of physical harm. § 87(2)(b) was initially 10 feet away but got closer as he walked towards Sgt. Clough. PO Vasquez and PO Scott were approximately five feet away standing in front of Sgt. Clough. § 87(2)(b) never made contact with Sgt. Clough and got within 2-3 feet of Sgt. Clough before PO Scott and PO Vasquez grabbed him. PO Scott grabbed one of § 87(2)(b)'s arms while PO Scott grabbed the other arm.

Once Sgt. Clough saw that the officers had control of § 87(2)(b) he approached and was able to place one handcuff on § 87(2)(b)'s hand. § 87(2)(b) resisted by not letting the officers grab hold of his other hand. Sgt. Clough did not observe officers use any additional physical force aside from attempting to grab his arm. Two additional officers assisted by trying to gain control of § 87(2)(b)'s hand to place the second handcuff on him, however, Sgt. Clough was unable to identify these two officers. Sgt. Clough released his grip of § 87(2)(b) after he felt a slight pull on his pinky from the handcuffs. The officers then brought § 87(2)(b) down to the ground in a facedown position while lying on his stomach with his head up. There was another individual within the vicinity of the struggle who got close. For safety issues, Sgt. Clough turned his attention towards the individual. Sgt. Clough did not see if an officer went behind § 87(2)(b) since he was focused on the individual, who was large, as he feared that the individual would grab a hold of his weapon. The officers were able to place the second handcuff on § 87(2)(b). Sgt. Clough returned his attention to § 87(2)(b) and saw that § 87(2)(b) was still on the ground with both hands in handcuffs. Sgt. Clough approximated that it took less than one minute to handcuff § 87(2)(b).

PO Scott (BR 04) said § 87(2)(b) called Sgt. Clough a “faggot” and that § 87(2)(b) turned around and accused Sgt. Clough of being the one to call him a “faggot.” § 87(2)(b) informed § 87(2)(b) that he was the one who said “faggot” and that he called the sergeant a “faggot.” § 87(2)(b) attempted to restrain § 87(2)(b) who dropped the bag that was in his hands and clenched his fists while making an attempt to “attack” Sgt. Clough by attempting to get past § 87(2)(b) to get to Sgt. Clough. § 87(2)(b) did not swing his fists at any officers on scene and did not make any harmful contact towards any officer. PO Scott intervened by stepping in his path towards Sgt. Clough and held onto both of § 87(2)(b)'s wrists while facing him. § 87(2)(b) tried to pull his arms back to break free from PO Scott's grasp. PO Scott did not permit § 87(2)(b) to get close to Sgt. Clough who was standing behind PO Scott. PO Vasquez

immediately assisted in restraining § 87(2)(b) however, PO Scott did not know how PO Vasquez assisted in the restraint. Additional officers made an attempt to restrain § 87(2)(b) however, PO Scott did not recall which other officers assisted.

PO Vasquez's statement was generally consistent with PO Scott's with the following exceptions noted. PO Vasquez (BR 05) said that after PO Scott made contact with § 87(2)(b) he went behind § 87(2)(b) and wrapped his arm around § 87(2)(b)'s right shoulder. § 87(2)(b) physically resisted by tensing his arm, placing them in front of him, and refusing to place them behind his back. Officers brought § 87(2)(b) down to the ground and PO Vasquez fell on top of § 87(2)(b) since he still had a hold of his shoulder. Less than one minute later, officers were able to place § 87(2)(b) in handcuffs.

Lt. Mauceli (BR 07) said that he observed § 87(2)(b) barking at Sgt. Clough and stated that they were approximately a foot apart. He added that Sgt. Clough did not take any action in response and did not remember if Sgt. Clough said anything to § 87(2)(b). A few seconds later, § 87(2)(b) walked away a short distance away, dropped his bags, and lunged at Sgt. Clough. Lt. Mauceli described this lunging as § 87(2)(b) taking aggressive and rapid steps towards Sgt. Clough. In response, PO Vasquez and PO Scott grabbed § 87(2)(b) and forced him to the ground. Lt. Mauceli and five to seven additional officers then handcuffed § 87(2)(b). Lt. Mauceli elaborated that the additional officers were needed to handcuff § 87(2)(b) who was resisting. § 87(2)(b) was told multiple times to place his hands behind his back and that § 87(2)(b) applied pressure to his arms to resist being handcuffed. Lt. Mauceli helped in handcuffing § 87(2)(b) by attempting to grab his arm and placing it behind his back. After one minute, § 87(2)(b) was placed in handcuffs.

The video from Forest Hills Stadium (BR 08) § 87(2)(g) contains no audio. The video shows at 00:08, § 87(2)(b) walking away from the officers and turning around. At 00:15, § 87(2)(b) drops a bag, makes a rapid movement towards the officers, while § 87(2)(b) makes an attempt to force him in the opposite direction, and is physically stopped by PO Vasquez. From 00:16 and 00:34, the video shows officers' using physical force against § 87(2)(b) § 87(2)(g)



201805070_20180822_1457_DM.mp4

The arrest report (BR 09), prepared by PO Magenheimer, states that officers executed a forcible takedown to subdue § 87(2)(b) and that § 87(2)(b) continued to struggle with officers, resisted arrest, and ignored multiple verbal commands seeking his compliance.

The TRI, prepared by Sgt. Clough, notes that § 87(2)(b) charged at an officer with clenched fists. When asked about this entry, Lt. Mauceli did not remember § 87(2)(b) clenched his fists when charging at Sgt. Clough (BR 11). PO Scott's TRI (BR 16) and PO Vasquez's TRI (BR 17) note that a forcible takedown was used on § 87(2)(b) that § 87(2)(b) was wrestling and grappling with officers, and that § 87(2)(b) was injured and taken to the hospital for an abrasion to his right knee.

The ISAR (BR 10), prepared by Captain Cermeli, states that "PO Scott and PO Vasquez had to overcome § 87(2)(b)'s aggression and forcefully take him to the ground and use assistance from other officers on scene to assist in handcuffing to prevent further injury."

According to NYPD Patrol Guide Procedure 221-02, "Active resisting includes physically evasive movements to defeat a member of the service's attempt at control, including

bracing, tensing, and pushing to avoid or prevent being taken into or retained in custody” (BR 12).

According to NYPD Patrol Guide Procedure 221-01, “Force may be used when it is reasonable to place a person in custody or to prevent escape from custody. Any application or use of force must be reasonable under the circumstances” (BR 13).

§ 87(2)(b), § 87(2)(g)

Allegation (F) Force: Police Officer Julio Vasquez used a chokehold against § 87(2)(b)

§ 87(2)(b) (BR 02) alleged that, during the use of physical force against him, one of the officers placed him in a chokehold causing him to black out. § 87(2)(b) did not know if he blacked out because of the alleged chokehold or because his PTSD caused him to have an anxiety attack which resulted in him passing out. § 87(2)(b) stated that he did not actually remember being placed in a chokehold, but the following day, § 87(2)(b) and § 87(2)(b) told him that the officers had used a chokehold on him. § 87(2)(b) and § 87(2)(b) did not describe to § 87(2)(b) how the officers placed their arms around his neck. However, § 87(2)(b) believed that he was placed in a chokehold as the following day he felt symptoms of a cold and had trouble swallowing.

The medical records (BR 14) do not contain a mention of a chokehold and note that § 87(2)(b) denied shortness of breath, chest pain, or other symptoms of a chokehold being used.

§ 87(2)(b) (BR 03) said that when the officers made physical contact with § 87(2)(b) PO Vasquez placed § 87(2)(b) in a chokehold by bending his left arm around § 87(2)(b)'s neck and then used his right hand to lock the chokehold. He added that PO Vasquez's chokehold caused § 87(2)(b)'s eyes to bulge out of his head and that § 87(2)(b) turned red as he gasped for air and was unable to speak. § 87(2)(b) did not inform § 87(2)(b) during or after this incident that he had trouble breathing. Once § 87(2)(b) was in handcuffs, approximately ten seconds later, PO Vasquez released the chokehold. § 87(2)(b) was conscious and did not appear to pass out at any point.

Because of low quality, the video was inconclusive in whether a chokehold was used against § 87(2)(b).

PO Vasquez (BR 05) said that after making physical contact with § 87(2)(b) he went behind § 87(2)(b) and wrapped his arm around § 87(2)(b)'s right shoulder. He did not recall wrapping his arm around § 87(2)(b)'s neck at any point. PO Vasquez denied placing § 87(2)(b) in a chokehold. § 87(2)(b) did not complain of being placed in a chokehold. He did not observe PO Scott or Sgt. Clough place § 87(2)(b) in a chokehold and § 87(2)(b) did not complain that either officer took this action. § 87(2)(b) did not complain that he could not breathe from PO Vasquez's placement of his arm around his body. PO Vasquez did not observe any other officer place their arm around § 87(2)(b)'s body.

PO Scott (BR 04) denied placing § 87(2)(b) in a chokehold. PO Scott did not recall observing PO Vasquez placing his arm around § 87(2)(b)'s neck or placing him in a

chokehold. PO Scott did not recall observing any officer place § 87(2)(b) in a chokehold. He did not recall hearing § 87(2)(b) complain that PO Vasquez or any officer placed him in a chokehold. PO Scott did not hear § 87(2)(b) complain that any actions taken by PO Vasquez restricted his breathing. He did not observe any officer take any action that would have restricted § 87(2)(b)'s breathing while restraining him.

Sgt. Clough's (BR 06) said that he did not see an officer go behind § 87(2)(b) to assist in subduing him. Sgt. Clough did not see PO Vasquez place his arm around § 87(2)(b)'s neck and did not see him place § 87(2)(b) in a chokehold. Sgt. Clough did not see PO Vasquez take any actions that would have restricted § 87(2)(b)'s breathing. § 87(2)(b) did not complain that he was placed in a chokehold and he did not complain that he was unable to breathe for any reason.

Lt. Mauceli (BR 07) said stated that PO Vasquez placed his arm around § 87(2)(b)'s chest and used it as leverage to pull § 87(2)(b) forward and onto the ground. He did not see any other officer place his hands or arms around § 87(2)(b)'s neck during the forcible takedown. He did not remember if § 87(2)(b) stated, that he could not breathe. Lt. Mauceli did not witness PO Vasquez use a chokehold on § 87(2)(b). Lt. Mauceli did not witness § 87(2)(b)'s eyes bulge out of his head or him gasping for air and was never made aware that this occurred. He added that he did not remember if § 87(2)(b) complained of a chokehold or that he could not breathe.

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- PO Julio Vasquez has been a member of service for 22 years and has been a subject in four CCRB complaints and five allegations, none of which were substantiated. § 87(2)(b)
- PO Scott has been a member of service for eight years and has been a subject in two CCRB complaints, of which one was substantiated.
 - 201700112 involved a substantiated allegation of a search of person. The Board recommended Command Level Instructions and the NYPD imposed formalized training.
- Sgt. Clough has been a member of service for 23 years and has been a subject in 13 CCRB complaints and 28 allegations, of which two were substantiated.
 - 200306172 involved substantiated allegations of physical force and a threat of arrest against Sgt. Clough. For the allegation of physical force, the Board recommended charges and Sgt. Clough received command discipline and lost three vacation days. For the allegation of a threat of arrest, the Board recommended charges and the NYPD declined to impose any disciplinary action.
 - § 87(2)(g)

- Lt. Mauceli has been a member of service for 11 years and has been a subject in six CCRB complaints and seven allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b)
- On March 21, 2019, a FOIL request was submitted to the New York City Office of the Comptroller and will be added to the case file upon receipt.

Squad No.: _____4_____

Investigator:	_____ Signature	_____ Print Title & Name	_____ Date
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Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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